

Appln. No. 10/625252
Amendment dated July 30, 2007
Reply to Office Action mailed April 30, 2007

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REMARKS

Reconsideration is respectfully requested.

Claims 1, 3, 5 through 7, 9 through 13, and 15 through 21 remain in this application. Claims 2, 4, 8, and 14 have been cancelled. No claims have been withdrawn. Claims 22 and 23 have been added.

Parts 1 and 2 of the Office Action

Claims 1 through 3 and 5 through 20 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Roth in view of Kiely.

Claim 21 has been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Roth and Kiely in view of Kamei.

Claim 1 requires, in part, "including, by the seller during the occurrence of the sales transaction, at least one of the one or more real-time marketing opportunities corresponding to the winning bid" and "completing the sales transaction between the seller and the customer for the product". Claim 7 requires, in part, "a processor coupled to the network, the processor being configured to: ...include, by the seller during the occurrence of the sales transaction, at least one of the one or more real-time marketing opportunities corresponding to the winning bid" and "complete the sales transaction between the seller and the customer for the product". Claim 13 requires in part "instructions carried on the computer readable medium, the instructions being readable by a processor, and the instructions causing a processor to: ...include, by the seller during the occurrence of the sales transaction, at least one of the one or more real-time marketing opportunities corresponding to the winning bid" and "complete the sales transaction between the seller and the customer for the product".

It is submitted that neither the Roth patent nor the Kiely patent application, nor any allegedly obvious combination thereof, would lead one

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of ordinary skill in the art to the requirements of these claims, particularly the requirements set forth above. For example, the Kiely patent application, which is the most specific in this area, indicates that the "upsell" is part of a "post-sale opportunity" that is not part of the sales transaction. Thus, the "post-sale opportunity" is not part of the sales transaction, and the customer is presumably required to enter another sales transaction to take advantage of the "post-sale opportunity". This can dissuade the customer from taking advantage of the "post-sale opportunity", and thus can make the opportunity to present the "post-sale opportunity" to the customer less valuable to the third party hoping to make the "upsell". In contrast, the claimed invention permits the offer of the marketing opportunity to be taken advantage of during the sales transaction.

It is therefore submitted that the cited patents, and especially the allegedly obvious combination of Roth, Kiely, and Kamei set forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claims 1, 7 and 13. Further, claims 2, 3, 5, 6 and 19 through 21, which depend from claim 1, claims 8, 9, 11 and 12, which depend from claim 7, claim 10, which depends from claim 8, claims 14, 15, 17 and 18, which depend from claim 13 and claim 16, which depends from claim 14 also include the requirements discussed above and therefore are also submitted to be in condition for allowance.

Further, it is noted that claim 19 was added in the previous (RCE) response and requires, in part, "wherein the one or more real-time marketing opportunities includes an opportunity to provide an offer, and additionally comprising the step of communicating the offer to the customer during the occurrence of the sales transaction". In the rejection of the pending Office Action, it is stated that:

Referring to claims 7-19. Claims 7 - 19 are rejected under the same rationale set forth in the rejection of claims 1 - 6. The combination of Roth and Kiely discloses apparatus and articles of manufacture comprising the components disclosed in claims 7 - 18.

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However, claim 19 is not an apparatus claim and does not correspond to any of claims 7 through 18, so it is submitted that claim 19 has not been fully and properly addressed in the rejection, and it is respectfully requested that if the rejection of claim 19 is maintained, that the requirements of claim 19 be more specifically addressed.

Withdrawal of the §103(a) rejections of claims 1, 3, 5 through 7, 9 through 13, and 15 through 21 is therefore respectfully requested.

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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